BEFORE THE
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC

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In the Matter of	
SECURITY PROGRAMS OF FOREIGN AIR CARRIERS	Docket No. FAA-1998-4758-9 Notice No. 98-l 7
Notice of Proposed Rulemaking	

STATEMENT OF
SCANDINAVIAN AIRLINES SYSTEM (SAS)

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BEFORE THE
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC

In the Matter of	)	
SECURITY PROGRAMS OF FOREIGN AIR CARRIERS	)	Docket No. FAA-1998-4758 Notice No. 98-17
Notice of Proposed Rulemaking	)	

STATEMENT OF
SCANDINAVIAN AIRLINES SYSTEM (SAS)

Scandinavian Airlines System ("SAS") is the flag carrier of the three Scandinavian countries -- Denmark, Norway and Sweden. SAS appreciates the opportunity to present its views today on the FAA's proposal to implement the so-called Hatch Amendment and require foreign air carriers to adopt security programs that adhere to the identical security measures required of U. S. air carriers.

Statement of Position

SAS joins the other foreign air carriers and foreign governments testifying today in voicing strong opposition to the FAA's proposal. SAS's opposition is based on both legal and operational considerations.

On the operational side, imposing the "identical security program" requirement on SAS will require SAS to extend its minimum connect times (MCT) at our European hub airports costing SAS millions of dollars annually, and require changes to European airport infrastructure that are costly and difficult to implement.

As a legal matter, SAS believes the proposed rule would violate the Chicago Convention and provisions of the U.S.-Scandinavian bilateral agreements.

I will address each of these grounds in more detail today.

SAS Security Measures Are Excellent

SAS needs to state at the outset its view that the Hatch Amendment and this rulemaking are not about passenger safety and security. Imposition of U. S. security program requirements on foreign air carriers will not make international flying safer or strike a blow against international terrorism. SAS in cooperation with the Scandinavian aeronautical and police authorities implements security measures that make our flights among the safest in the world. They are safe for Scandinavians; they are safe for Americans. Efforts to implement the Hatch Amendment will not make them any safer.

The disagreement we have with the U. S. authorities concerns how to assess the level of the security threat for non-U.S. airlines, and the most appropriate measures for combating that level of threat. We do not question the FAA's authority to determine the threat-level for U.S. airlines. But the knee-jerk reaction that what is good for U.S. carriers is good for non-U. S. carriers is a conclusion we cannot accept. We believe Scandinavian authorities are in the best position to determine the level of threat directed against SAS -- especially at airports located in the Scandinavian countries. Frankly, the threat level may be greater for U.S. carriers, but that does not mean that the measures taken by Scandinavian authorities -- and that will be taken in the future -- are not appropriate to the threat faced by S AS.

Reasonable security experts can also differ on the best measures to deter security threats. U.S. authorities have decided that passenger "profiling" is of great value, while European

including Scandinavian authorities have given greater prominence to a "positive passenger/bag match" requirement. The emphasis on different measures reflect both the differing threat assessments and the differing industry infrastructure of Europe compared with the United States. To cite one example, imposition of the European "positive passenger/bag match" requirement for U. S. domestic flights would force dramatic (perhaps chaotic) changes on the hub-and-spoke systems operated by the major domestic U.S. carriers today. It would probably delay flights, and increase airport congestion. That this requirement is in effect on intra-European flights today does not mean that the U. S. domestic system is any less safe without it.

Scope of Proposed Rule for SAS Operations

SAS's U.S. operations consist of daily flights from its Scandinavian hub airports -- Copenhagen, Stockholm and Oslo -- to Newark Chicago and Seattle. There are daily flights from each Scandinavian hub airport.. to Newark, and daily flights from Copenhagen and Stockholm to Chicago. Seattle is served with a daily flight from Copenhagen. With three European departure airports, the impact of the "identical security program" rule on SAS could be complicated and pervasive.

SAS must therefore seek clarification from the FAA immediately as to the potential scope of the FAA's proposal on SAS's U.S. operations.

The proposed amendment to Part 129.25(e) would require a security program that "requires the foreign air carrier in its operations to and from airports in the United States to adhere to the identical security measures that the Administrator requires U.S. air carriers serving the same airports to adhere to." NPRM, 63 Fed. Reg. at p. 64769 (November 23, 1998).

The NPRM states at page 64766 that to implement the new requirement, FAA will review and update the security requirements that need to be levied on U.S. carriers, and "the FAA will then impose identical security measures on all foreign carriers flying from those airports as last points of departure to the United States." Id. at p. 64766.

SAS's question is whether the "identical security program" requirement would apply only to Stockholm which is the only Scandinavian airport that is also served by U.S. carriers "as last points of departure to the United States." While SAS also operates U.S. flights from Oslo and Copenhagen, there are no U.S. carriers on these routes today. Indeed how the FAA would determine requirements at foreign airports applicable to non-U. S. carriers when such airports are not served by U.S. carriers is not addressed by the NPRM.

SAS urges the FAA to address the question of the proposed rule's application to SAS's operations at its earliest opportunity.

Operational Objections and Increased Costs of Compliance

Assuming the proposed rule would apply to SAS operations at all three Scandinavian airports, the costs of compliance for SAS would be enormous. SAS estimates the annual cost of the operational changes required to be $33.1 million annually. Much of the cost estimate reflects lost revenues resulting from implementation of the passenger "profiling" requirement.

"Profiling" will result in longer minimum connect times or MCTs at SAS's hub airports because more time will be needed to intercept the transfer passengers connecting to U.S. flights at the SAS hub airports and interview each before boarding, as well as interviewing those passengers originating at the departure city. This is a much bigger problem for European carriers such as SAS than U.S. carriers because a much higher percentage of our transatlantic traffic consists of

passengers connecting at the European hub airport. For SAS, this is in excess of 50% of the passengers on the flight, especially on our Copenhagen flights. SAS estimates that MCTs will increase from 30 to 45 minutes today to 90 to 120 minutes at its Scandinavian departure airports if "profiling" is implemented.

Intercepting the transfer passenger for "profiling" is just part the problem. The other part is that the airport infrastructure at Copenhagen, Stockholm and Oslo would require major reconstruction to handle the "profiling" requirement efficiently. Transfer passengers now proceed directly to the boarding gate since they are in transit and already have their boarding passes. If "profiling" is implemented these passengers would have to be directed to a "transfer passenger station" in the departure hall to be interviewed, or else new structures would need to be constructed adjacent to the departure gates used for U. S. bound flights to handle the "profiling" requirement. Moreover, since transfer passengers would have to wait longer for their departure flights, there would be a need for larger departure lounges with more seats. This airport infrastructure is not in place today, and SAS cannot at this time predict when it could be available. This is a question that should be addressed to the airport authorities and their trade association.

While connecting passengers are being "profiled," their baggage will have to be x-rayed anew which creates another "bottleneck" that will extend MCTs. Again this is an airport infrastructure problem as well. The airport authorities at the Scandinavian airports do not possess enough x-ray machines to process the volume of baggage required under the proposed rule. However, all European airports are scheduled to be able to x-ray all baggage on January 1, 2003 when new European-wide security procedures go into effect. Until then it will be almost impossible for SAS to comply with this requirement.

SAS's estimates of added costs for the "identical security program" rule to be implemented do not reflect these cost elements that would be borne by the airport authorities. The SAS estimate reflects only costs incurred by SAS. These include **(1)** $25.6 million in lost passenger revenues (over 35,500 passengers) from missed connections that could not be accommodated due to the longer MCTs and related lack of gates for other connecting flights; (2) $5.5 million in higher payments to security sub-contractors that would handle the "profiling" and other security measures; and (3) $2.0 million to establish a new SAS security operation at the Oslo airport. The total is $33.1 million annually. If SAS's increased costs are matched by other foreign carriers, the total industry costs will dwarf the FAA's conservative estimates.

Legal Objections to Prooosed Rule

Let me now turn briefly to SAS's legal objections to implementation of the Hatch Amendment which will be addressed in greater detail in our formal comments when filed on March **23.**

The FAA defends the NPRM as a valid exercise of U. S. rights under Article 11 of the Chicago Convention which requires foreign carriers to comply with the laws and regulations of the destination state for admission to or departure from its territory. The FAA also cites Annex 17 to the Convention, as well as provisions of U. S. bilateral agreements. As far as Article 11 is concerned, standing by itself, this is a rather strained interpretation since the U.S. regulations for admission being applied are not being applied in U.S. territory but to activities occurring in the territory of another sovereign thousands of miles away from the United States,

But the U.S. justification ignores also the interaction between Article 11 and Article 37 of the Convention. Under the latter each Contracting State undertakes to collaborate in securing the

highest practicable degree of uniformity in regulations, standards, procedures and organization. ICAO principles urge Contracting States to avoid promulgating or enforcing rules which are more exacting or different from the Standards and Recommended Practices (SARPs) contained in the Annexes to the Chicago Convention including Annex 17 as such divergent standards would impact negatively on the undertaking to secure uniformity.

Yet that is precisely what will happen if the Hatch Amendment requirements are implemented, and foreign airlines are required to comply with conflicting security directives issued by the FAA and their homeland authorities.

The Hatch Amendment clearly has extraterritorial effects, and those extraterritorial effects place the United States in violation of its obligations under Article 37 of the Chicago Convention.

The proposed requirement for "identical security programs" also conflicts with the aviation security provisions of the U.S.-Denmark, -Norway, and -Sweden Air Transport Agreements. Article 8(d) of the U.S.-Sweden Agreement, for example, provides that the contracting parties shall "also give positive consideration to any request from the other Contracting Party for special security measures to meet a particular threat." The principle underlying this provision is that changes to aviation security requirements are to be determined on a government-to-government basis, not by the FAA's direct regulation of the foreign carrier's security measures in its homeland territory. If the security threat has changed since the bilateral came into force, and the U.S. desires "special security measures" to be imposed outside of U. S. territory, Article 8(d) requires that the United States make that request of the Swedish and other Scandinavian authorities on a government-to-government basis. Promulgation of the proposed rule -- at least to SAS -- would be in violation of that U. S. bilateral undertaking.

Summary

In summary, SAS objects to the proposed rule. It will be operationally difficult and enormously expensive for SAS to implement. Its implementation would violate the Chicago Convention and provisions of the U.S.-Scandinavian bilateral agreements. Finally, SAS needs clarification from FAA whether the proposed rule, if implemented, would apply to more than just SAS's Stockholm flights which is the only Scandinavian airport from which U.S. carriers operate today.

Thank you for affording SAS this opportunity to present its views.